

**THIS OPINION WAS NOT WRITTEN FOR PUBLICATION**

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 17

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* PATRICK HENGL

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Appeal No. 97-4406  
Application No. 08/436,255<sup>1</sup>

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ON BRIEF

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Before McCANDLISH, *Senior Administrative Patent Judge*, ABRAMS and NASE, *Administrative Patent Judges*.

ABRAMS, *Administrative Patent Judge*.

**DECISION ON APPEAL**

This is an appeal from the decision of the examiner finally rejecting claims 1, 2, 14, 15 and 26. Claims 5 and 16-25 have been withdrawn from consideration as being directed to a non-elected species (Paper No. 7). Claims 3, 4, 6-13 and 27-29 have

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<sup>1</sup>Application for patent filed May 15, 1995. According to appellant, this application is the national stage application of PCT/FR93/01107, filed November 13, 1993.

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been indicated as containing allowable subject matter and stand objected to as depending from a rejected claim (Paper No. 7).

The appellant's invention is directed to a device for the recovery and storage of waste. The subject matter before us on appeal is illustrated by reference to claim 1, which has been reproduced in an appendix to the Brief.

#### **THE REJECTION**

Claims 1, 2, 14, 15 and 26 stand rejected under 35 U.S.C. § 112, first paragraph, as being based upon a specification that fails to enable one of ordinary skill in the art to make and use the invention.

The rejection is explained in the Examiner's Answer.

The opposing viewpoints of the appellant are set forth in the Brief.

#### **OPINION**

The appellant's invention relates to an apparatus for the recovery and storage of waste in situations like water closets and hospital waste. As we understand the invention from the original disclosure, at least one sheath arranged around a waste-receiving receptacle is fed therethrough in an invaginating

manner past an obstruction for changing direction which functions to close the sheath downstream of the collected waste. The sheath then is carried away to a storage zone.

The examiner's position is that while the specification is enabling for a device in which waste is contained "within both plastic (liquid impermeable) and textile (liquid permeable) sheaths," it is not enabling for "only containing waste within a liquid permeable sheath," which the examiner believes is the only type of sheath that can meet the claim requirement of being radially expandable (Answer, pages 3-4). As the appellant has pointed out, the purpose of the enablement requirement is to insure that one of ordinary skill in the art can make and use the invention described in the claims without undue experimentation. In the present case, the appellant has, through twenty-one pages of specification, explained in detail the structure and operation of the invention, including the characteristics of the sheaths. The appellant has provided a thorough discussion of this rejection on pages 3-6 of the Brief, in which he asserts that the information provided in the specification, taken with the skill that must be accorded to the artisan, is sufficient to allow one of ordinary skill in the art to make and use the invention recited in claim 1 without undue experimentation. We agree, for

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the reasons set forth therein, and we therefore will not sustain  
the rejection.

The decision of the examiner is reversed.

**REVERSED**

HARRISON E. McCANDLISH,	)	
Senior	)	
Administrative Patent Judge)	)	
	)	
	)	
NEAL E. ABRAMS	)	BOARD OF PATENT
Administrative Patent Judge)	)	APPEALS AND
	)	INTERFERENCES
	)	
JEFFREY V. NASE	)	
Administrative Patent Judge)	)	

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